

FILED

DEC 06 2017

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

GREGORY LYNN WALLACE,

Defendant/Movant.

Cause No. CR 04-61-BLG-SPW
CV 17-81-BLG-SPW

ORDER

This case comes before the Court on a document filed by the clerk as a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Wallace is proceeding pro se.

It is not clear why the document was filed as it was, or filed in this case at all. To be fair to the clerk, it is impossible to understand what Wallace intended to do. To whatever extent he intended to file a § 2255 motion in this matter, he is not able to do so. Wallace is no longer in custody, so the writ of habeas corpus (which is essentially what § 2255 provides) is not available. *See Maleng v. Cook*, 490 U.S. 488, 492 (1989) (per curiam). No exception to the custody requirement applies, because the usual means of collateral challenge were available to Wallace at the appropriate time. *See Resendiz v. Kovensky*, 416 F.3d 952, 959-60 (9th Cir. 2005), *abrogated on other grounds by Padilla v. Kentucky*, 559 U.S. 356, 374

(2010). No forward path is available to Wallace in this case.

To the extent Wallace objects to the significance given in other matters to his conviction in this case, any remedy lies in those other matters, not in this case.


Accordingly, IT IS HEREBY ORDERED:

1. Wallace's document, construed as a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 70), is DISMISSED for lack of jurisdiction as he is no longer in custody.

2. A certificate of appealability is DENIED because the document does not make a showing of any substance that Wallace was deprived of a constitutional right and reasonable jurists could not disagree with the procedural ruling.

3. The clerk shall ensure that all pending motions in this case and in CV 17-81-BLG-SPW are terminated and shall close the civil file by entering, by separate document, a judgment of dismissal.

DATED this 6th day of December, 2017.



Susan P. Watters
United States District Court